

September 9, 2013

VIA ELECTRONIC AND CERTIFIED MAIL

Robert A. Kaplan
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Re: Response to USEPA Correspondence Dated August 27, 2013 Regarding Veolia ES
Technical Solutions, L.L.C. (“Veolia”)

Dear Bob:

Thank you for your follow-up regarding your correspondence dated August 27, 2013 (“August 27th Letter”) concerning communications between Veolia and USEPA Region 5 (“Region 5” or “Agency”). I believe our telephone conversations have been productive and I look forward to working with you to resolve this matter.

Veolia’s response to the August 27th Letter is set forth below. As I related in our conversations, the information contained in August 27th Letter answered some of our questions concerning why we had not received any response from Region 5 regarding our submissions.

As you know, on March 28, 2013, Veolia submitted its comments pertaining to Region 5’s proposal to reopen and modify Veolia’s Clean Air Act Title V operating permit (“Title V permit”). The following day, March 29, 2013, Veolia mailed a letter to Region 5 in an effort to continue to negotiate and resolve the various open issues concerning Veolia’s Title V permit (“March 29th Letter”). Among other items, the March 29th Letter included an offer by Veolia to spend significant resources on additional pollution control equipment at its Sauget facility. The March 29th Letter also conveyed Veolia’s request for a meeting with Region 5 to further discuss Veolia’s offers at resolution. In addition, because Veolia’s Title V permit is essential to its business operations—and critical to Veolia’s ability to remain a viable regional employer—Veolia carbon copied both U.S. Representative William Enyart and U.S. Representative John Shimkus on the March 29th Letter.

After sending the March 29th Letter, we learned that both congressmen received the letter shortly after it was mailed and, therefore, we also assumed that Region 5 received the March 29th Letter a few days after its’ mailing.

Having no indication that Region 5 did not, in fact, receive the March 29th Letter, Veolia assumed that Region 5 would eventually respond. However, as the months passed, and still having not received a response from Region 5, Veolia reached out to various elected officials to establish a line of communication with the Agency.

The first time Veolia had any indication that USEPA did not receive the March 29th Letter was at a June 5, 2013 meeting with George Czerniak. However, at that time, Veolia had already reached out to the Agency through various elected officials and understood that Regional Administrator Hedman had agreed to meet with Veolia concerning the reopening of Veolia's Title V permit. Veolia also believed that Regional Administrator Hedman requested that Veolia provide her with a document prior to the meeting setting forth the background for the permit reopening and Veolia's positions on various important issues involved with Veolia's Title V permit.

Veolia drafted a letter and memorandum in response to what it believed was Regional Administrator Hedman's request ("August 2nd Letter"). Veolia did not mail the August 2nd Letter to the Regional Administrator. Rather, Veolia again reached out through various elected officials to communicate with the Agency.

Based on this series of events, we were surprised to learn that Regional Administrator Hedman had not agreed to meet with Veolia and had not requested the August 2nd Letter. As you indicate, there has apparently been a misunderstanding and a miscommunication regarding these issues.

While there may have been a misunderstanding, I can assure you that—at no time—did Veolia try to make a false record concerning the would-be meeting between it and the Regional Administrator. Veolia was merely expressing its thanks to the Regional Administrator for agreeing to meet—a fact that it believed to be true at the time the August 2nd Letter was drafted. To the extent that the Regional Administrator never agreed to such a meeting, we apologize for this misunderstanding.

As you point out, the August 2nd Letter also includes Veolia's concern that the Agency breached its verbal agreement concerning the timing of Veolia's Comprehensive Performance Testing ("CPT"). Unlike the meeting issue, the events surrounding the CPT have nothing to do with the misunderstanding or miscommunication noted above. To this end, Veolia stands by its assertion that the Agency did indeed fail to honor a verbal agreement made to Veolia in the fall of 2008 concerning the timing of the CPT testing. As we discussed, this, and the other issues set forth in the August 2nd Letter, continue to be points of contention between USEPA and Veolia.

Because we have always believed that these issues should be addressed—and potentially resolved—in a high-level meeting between Veolia and USEPA, I was pleased when you informed me that Regional Administrator Hedman would now be open to meeting with us.

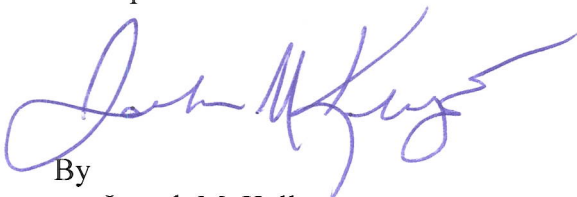
However, despite the Regional Administrator's offer to accommodate our request, I remain hopeful that we can resolve the issues between counsel, without the Regional Administrator's intervention.

In sum, the August 27th Letter shed light on a miscommunication issue that had also perplexed us and we apologize for the misunderstanding. Moreover, we agree to send all further correspondence to Mr. Cohen, as suggested in your letter. (However, as we discussed, I hope that we can continue to communicate directly, by telephone or otherwise, about any issues that arise as we work toward a solution for our clients.)

Please let me know if you have any questions and I look forward to speaking with you again soon about the CPT Plan and other pending issues.

Very truly yours,

Thompson Coburn LLP


By
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cc: Mr. Doug Harris

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